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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

DONALD LEONARD CAVINESS,

Defendant and Appellant.

C076110

(Super. Ct. No. SF125826B)

A jury found defendant Donald Leonard Caviness guilty of transportation of heroin, possession of heroin for sale, being a felon in possession of a firearm, carrying a loaded firearm in public, being a felon in possession of ammunition, and possession of heroin with a loaded firearm. On appeal, defendant contends there is not substantial evidence supporting these convictions. We disagree and affirm the judgment.

FACTUAL BACKGROUND

Stockton Police Officer Houston Sensabaugh and San Joaquin County Sheriff's Deputy Nick Taiariol were patrolling Stockton in October 2013. They stopped a white Mercedes after they witnessed the driver commit a number of traffic violations. As the Mercedes was pulling over, Officer Sensabaugh noticed the passenger (defendant) "messing with something" in the center console of the car. Officer Sensabaugh contacted the driver, Dante Caviness, and Deputy Taiariol contacted defendant. The car was registered to Dante.

Dante was sweating and his hands were shaking, he appeared very nervous. Officer Sensabaugh asked Dante if there was anything illegal in the car and Dante answered he was not aware of anything. The officers had Dante and defendant step out of the vehicle, conducted a weapons search, and placed them both in handcuffs. Defendant was calm and cooperative. Deputy Taiariol searched the vehicle. He found a loaded .22-caliber revolver and four clear sandwich bags containing golf ball-sized blocks of heroin. The baggies contained 25.31 grams, 24.34 grams, 23.54 grams, and 25.18 grams of heroin; a total of 98.37 grams. Officer Sensabaugh also found \$255 cash in defendant's pocket. In the trunk of the car, Deputy Taiariol found a box of .22 long rifle ammunition in a black and red backpack, unused packaging material, and a digital scale with brown sticky residue on it. A number of rounds of ammunition were missing from the box, the same number that was loaded into the firearm. The ammunition in the backpack matched the firearm under the front seat. The residue on the scale was consistent with what would be on a scale used to measure this kind of heroin. The backpack in which the ammunition was found also contained a traffic citation issued to defendant.

When Officer Sensabaugh approached the car from the driver's side, he could not see the gun or any contraband in plain view. Deputy Taiariol found the baggies of heroin in the storage pocket of the passenger side door. The storage pocket was not covered and

the baggies were clearly visible from the front passenger seat. The gun was under the passenger seat, toward the front; the handle was closest to the front passenger door, with the barrel pointed toward the driver's side of the car. The gun was partially sticking out from under the seat, overlapping slightly with the floorboard mat, and was loaded with six rounds of .22-caliber ammunition.

The People admitted photographs of the car into evidence. The photographs included pictures of the storage pocket in which Deputy Taiariol found the heroin, and the position of the gun. The ballistics technician could not find any latent fingerprints on the gun, and the gun was not registered.

Detective Fritts testified as a narcotics expert in possession of heroin for sale. The average dose of heroin is approximately 0.05 to 0.10 grams. It is common for people selling narcotics to carry firearms. A tenth of a gram of heroin can sell for \$10 or an ounce can sell for between \$900 and \$1,200. The current street value of 98.3 grams (just under four ounces) would be between \$3,600 and \$4,800. The form and amount of heroin found in this case indicated to Fritts that it was possessed for sale, and the quantity indicated a higher-level dealer. In addition, the clean baggies would be used to package the heroin into smaller amounts for sale. In Detective Fritts's opinion, based on the 98.37 grams of heroin in four individual baggies, the .22-caliber loaded revolver, the box of .22-caliber ammunition, the digital scale, and unused plastic baggies, both Dante and defendant possessed the heroin for sale. He also noted that the lack of paraphernalia to ingest the heroin further indicated the heroin was possessed for sale, not personal use. Detective Fritts acknowledged that the passenger being in a car in close proximity to the heroin, in and of itself, would not support the conclusion that the passenger possessed the heroin. However, in this case there was more than mere proximity; ammunition for the weapon located under defendant's seat was found in the backpack along with a ticket issued to defendant.

Prior to defendant's trial, defendant's brother, Dante, pleaded guilty to transportation of heroin (Health & Saf. Code, § 11352), and admitted he was armed with a firearm; pleaded guilty to possession of heroin for sale (Health & Saf. Code, § 11351), and admitted as to this offense he was armed with a firearm; pleaded guilty to possession of a firearm and a controlled substance (Health & Saf. Code, § 11370.1, subd. (a)); and carrying a loaded firearm in a vehicle and not being the registered owner. (Pen. Code, § 25850, subds. (a) & (c)(6)).¹ Dante testified at trial that he had picked his brother up about 15 minutes before the officers stopped them and all the items in the car were his personal property, not defendant's. Dante did not tell defendant he had a gun, ammunition, and drugs in the car. Dante did not think anyone getting in the car would have been able to see the gun, as it was concealed. As for the backpack with the traffic citation made out to defendant, Dante stated he had been living out of his car and defendant had a lot of his stuff in the car, so it "just got thrown in there with everything else." Defendant did not participate in possessing any of the contraband in Dante's car.

While in custody, Dante had conversations with friends in which he stated, "they got us," and he identified the contraband as "our stuff" and said, "Go to Stockton [sic] Department page on Facebook, them niggas got all our shit on there . . . [¶] . . . they got everything they had caught us with." Dante claimed the "us" he was referring to was himself and defendant, but he maintained the contraband was his alone.

PROCEDURAL HISTORY

An information charged defendant with transportation of heroin (Health & Saf. Code, § 11352—count 1), possession of heroin for sale (Health & Saf. Code, § 11351—count 2), being a felon in possession of a firearm (§ 29800, subd. (a)(1)—count 3), carrying a loaded firearm in public (§ 25850, subd. (c)(1)—count 4), felon in possession

¹ Undesignated statutory references are to the Penal Code.

of ammunition (§ 30305, subd. (a)(1)—count 5), and possession of heroin with a loaded firearm (Health & Saf. Code, § 11370.1, subd. (a)—count 6). The information further alleged as to counts 1 and 2 that defendant was personally armed with a firearm. (§ 12022, subd. (c).) The information also alleged defendant had two prior strike convictions and had served a prior prison term. (§§ 1170.12, subd. (b), 667, subd. (d), & 667.5, subd. (b).) A jury found defendant guilty on all counts and found the firearm enhancements true. Defendant admitted the prior conviction allegations. The trial court struck one of the prior convictions and sentenced defendant to an aggregate term of 16 years in prison.

DISCUSSION

Defendant contends his convictions were not supported by substantial evidence. Specifically, he contends there was insufficient evidence to prove he had knowledge of the presence of illegal contraband in the car or that he intended to exercise control over the contraband. Defendant claims “the evidence only supported a finding that [defendant] was an innocent passenger in his brother’s car where the illegal contraband was found.” We disagree.

“In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we ‘examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.’ [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] The same standard of review applies to cases in which the prosecution relies primarily on circumstantial evidence and to special circumstance allegations. [Citation.] ‘[I]f the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.’ [Citation.] We do not reweigh evidence or

reevaluate a witness's credibility. [Citation.]" (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129.) "[T]he testimony of a single witness is sufficient for the proof of any fact." (*People v. Richardson* (2008) 43 Cal.4th 959, 1030-1031.) The testimony of an expert witness may also be sufficient to support a conviction. (*People v. Sengpadychith* (2001) 26 Cal.4th 316, 324; *People v. Gardeley* (1996) 14 Cal.4th 605, 620.)

Each offense for which defendant was convicted requires proof that defendant had knowledge of the presence of the contraband and intended to exercise control over it.² The drug offenses also required proof that defendant was aware of the drug's illegal character. (Health & Saf. Code, §§ 11352, 11351; § 25850, subd. (a)); *People v. Meza* (1995) 38 Cal.App.4th 1741, 1745-1746 (*Meza*); *People v. Harris* (2000) 83 Cal.App.4th 371, 374; *People v. Osuna* (2014) 225 Cal.App.4th 1020, 1030; *People v. Jeffers* (1996) 41 Cal.App.4th 917, 922; *People v. Cordova* (1979) 97 Cal.App.3d 665, 669; *People v. Singh* (2004) 119 Cal.App.4th 905, 912-913.) The offenses can be established by circumstantial evidence and any reasonable inferences drawn from that evidence. (*Meza, supra*, at p. 1746.)

"Possession may be either actual or constructive; the latter is established by showing that defendant maintained some control or right to control over contraband in the physical possession of another." (*People v. Rogers* (1971) 5 Cal.3d 129, 134.) "Exclusive possession is not necessary. A defendant does not avoid conviction if his right to exercise dominion and control over the place where the contraband was located is shared with others. [Citations.]" (*People v. Rushing* (1989) 209 Cal.App.3d 618, 622.) "[P]ossession may be imputed when the contraband is found in a place which is immediately and exclusively accessible to the accused and subject to his dominion and control, or to the joint dominion and control of the accused and another. [Citation.]"

² Although these elements can be analytically distinct, in this case the same evidence supports the convictions, so we will address them together.

(*People v. Williams* (1971) 5 Cal.3d 211, 215.) Exercise of dominion and control must be something more than mere presence at the scene where contraband is located and more than the opportunity to access a location where contraband is found. (*People v. Redrick* (1961) 55 Cal.2d 282, 285 [citing cases]; *People v. Glass* (1975) 44 Cal.App.3d 772, 777; e.g., *People v. Tabizon* (1958) 166 Cal.App.2d 271, 273-274.)

Here, defendant and his brother each had access to the gun and the drugs. Defendant was in the passenger seat of the car. The heroin was in the storage pocket of the passenger door right next to him and the gun was directly underneath him. The storage pocket was not covered and the baggies of heroin were visible from the passenger seat. The gun was partially sticking out from the seat, overlapping with the floorboard mat. It was positioned with the handle closest to the passenger door, making it most readily accessible to defendant. Although the gun and heroin were in Dante's car, defendant also kept many of his belongings in the car. A backpack in the trunk of the car included a traffic citation issued to defendant, along with a box of ammunition. The ammunition was the same caliber as that loaded into the gun found under defendant's seat, and the same number of rounds were missing from the box as were loaded in the gun. The traffic citation tied defendant directly to the ammunition contained in the backpack. Although Dante offered a plausible explanation of how the ticket ended up in the backpack, the jury was not required to accept that explanation. Defendant's backpack in the trunk of the car also tied defendant to other items in the trunk, including the digital scale, which appeared to have heroin residue on it, and the unused packaging materials. It was reasonable for the jury to infer defendant had access to the items and they were subject to his control.

Given the connection between the items in the backpack and trunk, and the contraband in the car, it was reasonable for the jury to infer defendant had access to those items, was aware of their presence, and exercised dominion and control over them. In addition, in conversations with friends, Dante referred to the contraband as belonging to

him and defendant. Detective Fritts, an expert in possession of narcotics for sale, concluded both Dante and defendant possessed the heroin for sale. He noted that people selling drugs frequently also possess guns. The amount of heroin indicated the possession was for sale, not personal use. Furthermore, there was no paraphernalia related to personal use. He concluded defendant was also in possession of the drugs based on his proximity to the gun and drugs, the ammunition found in the backpack along with a traffic citation issued to defendant, and the digital scale and packaging materials found near the backpack. Based on the totality of this evidence, it was reasonable for the jury to infer defendant was not merely an innocent passenger in his brother's car; but rather, possessed the gun, ammunition, and heroin, and intended to sell the heroin. This is substantial evidence to support defendant's convictions.

DISPOSITION

The judgment is affirmed.

RENNER, J.

We concur:

BLEASE, Acting P. J.

MAURO, J.